

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF
GOWANUS CANAL SUPERFUND SITE

450 Union LLC,
450 Union Developer LLC,

Respondents,

Proceeding under Sections 106(a)
and 122 of the Comprehensive
Environmental Response,
Compensation, and Liability Act
of 1980, as amended, 42 U.S.C.
§§ 9606(a) and 9622(a).

Index Number
CERCLA-02-2020-2004

ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT
FOR A REMOVAL ACTION

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (the "Settlement Agreement") is entered into voluntarily by 450 Union LLC and 450 Union Developer LLC ("Respondents") and the United States Environmental Protection Agency, Region II ("EPA") and requires Respondents to perform a removal action and pay certain response costs in connection with the Gowanus Canal Superfund Site located in Brooklyn, Kings County, New York.

2. This Settlement Agreement is issued to Respondents by EPA pursuant to the authority vested in the President of the United States under Section 106(a) and 122(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9622(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 *Fed. Reg.* 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region 2 to the Director of the Emergency and Remedial Response Division by Regional Order No. R-1200, dated January 19, 2017. Effective April 28, 2019, the Emergency and Remedial Response Division has been renamed the Superfund and Emergency Management Division. All delegations to the Director

of the Emergency and Remedial Response Division were conferred upon the Director of the Superfund and Emergency Management Division in a memorandum by the EPA Regional Administrator dated March 27, 2019.

3. Respondents' participation in this Settlement Agreement shall neither constitute nor be construed as an admission of liability or an admission of the Findings of Fact or Conclusions of Law contained in this Settlement Agreement. To effectuate the mutual objectives of EPA and Respondent, Respondents agree to comply with and be bound by the terms of this Settlement Agreement. Respondents agree not to contest the authority or jurisdiction of the Director of the Superfund and Emergency Management Division or his delegate to issue this Settlement Agreement, and further agree that they will not contest the validity of this Settlement Agreement or its terms in any proceeding to enforce the terms of this Settlement Agreement.

4. EPA has notified the State of New York (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and Respondents and their successors and assigns. Any change in the ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter the responsibilities of Respondents under this Settlement Agreement.

6. Respondents are jointly and severally liable for carrying out all activities required by this Settlement Agreement. In the event of the insolvency or other failure of a Respondent to implement the requirements of this Settlement Agreement, the remaining Respondents shall complete all such requirements.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or its implementing regulations. Whenever terms listed below are used in this Settlement

Agreement or in an attachment to this Settlement Agreement, the following definitions shall apply:

- a. "Day" means a calendar day unless otherwise expressly stated. "Working Day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business on the next working day.
- b. "Effective Date" means the date specified in Paragraph 110.
- c. "Party" or "Parties" means EPA and/or Respondents.
- d. "Property" means 450 Union Street, Kings County, Brooklyn, NY, which is identified on the Kings County Tax Map as Block 438, Lot 7.
- e. "Respondents" shall mean 450 Union LLC and 450 Union Developer LLC.
- f. "Response Costs" means (a) all direct and indirect costs paid by EPA from January 1, 2020 through the Effective Date of this Settlement Agreement related to the Respondents' proposed Work and this Settlement Agreement; (b) all direct and indirect costs incurred by EPA in overseeing Respondent's implementation of the Work (defined below) until the date of EPA's written notification pursuant to Paragraph 108 of this Settlement Agreement that the Work has been completed; (c) all direct and indirect costs incurred by EPA in connection with obtaining access for Respondents in accordance with Paragraph 63, below; and (d) all other direct and indirect costs incurred by EPA in connection with the implementation of this Settlement Agreement.
- g. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent, Index Number CERCLA-02-2020-2004, and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.
- h. "Site" shall mean the Gowanus Canal Superfund Site, including an approximately 100-foot wide, 1.8-mile-long canal located in the Borough of Brooklyn, Kings County, New York, and any areas that are sources of contamination to the canal. The

portion of the Property where the Work (defined below) is performed shall be considered "on-Site" within the meaning of 40 C.F.R. § 300.400(e)(1) during its implementation.

i. "Waste" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6903(27); and (4) any mixture containing any of the constituents noted in (1), (2), or (3) above.

j. "Work" means all work and other activities that Respondents are required to perform pursuant to this Settlement Agreement.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Gowanus Canal is a brackish, tidal arm of the New York-New Jersey Harbor Estuary, extending for approximately 1.8 miles through Brooklyn, New York. The approximately 100-foot-wide canal runs southwest from Butler Street to Gowanus Bay and Upper New York Bay. The adjacent waterfront is primarily commercial and industrial, currently including concrete plants, warehouses, and parking lots. The canal also borders several residential neighborhoods.

9. The canal was constructed by bulkheading and dredging a tidal creek and wetland. Following its completion in the late 1860s, the canal quickly became one of the nation's busiest industrial waterways, servicing heavy industries that included manufactured gas plants ("MGPs"), coal yards, cement manufacturers, tanneries, paint and ink factories, machine shops, chemical plants and oil refineries. As a result of the poor environmental practices typical of the era, large quantities of wastes from many of these operations were discharged directly into the canal. The canal served as an open sewer when it was initially constructed. By the late 1870s, sewers entering the canal carried a combination of household waste, industrial effluent from the MGPs and other industries, and storm water runoff.

10. Historic and ongoing discharges to the canal have contained hazardous substances such as polycyclic aromatic hydrocarbons ("PAHs") (a semi-volatile organic compound), polychlorinated

biphenyls ("PCBs"), pesticides, metals and volatile organic compounds ("VOCs"), causing the canal to become one of New York's most polluted waterways.

11. Much of the heavy industrial activity along the canal has ceased, although many upland areas adjacent to the canal remained zoned for industrial uses. Land uses along and near certain portions of the canal are in the process of transitioning from heavy industrial to light industrial, commercial, and residential. The canal is currently used by some for recreational purposes, such as boating, diving, and catching fish for consumption. The canal, Gowanus Bay and Upper New York Bay are subject to New York State fishing advisories.

12. At the request of the New York State Department of Environmental Conservation ("NYSDEC"), by publication in the *Federal Register* on April 8, 2009, EPA proposed the Site for inclusion on the National Priorities List ("NPL") established pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605. On March 2, 2010, EPA formally listed the Site on the NPL.

13. EPA conducted field work for a remedial investigation ("RI") between 2009 and 2010 and issued a draft RI report in January 2011. EPA's RI included sampling of various media, including canal sediment, surface water and groundwater and soil at properties along the canal thought to be the possible sources of ongoing contamination to the canal. The RI included human health and ecological risk assessments which found that canal sediments are affected by hazardous substances that are adsorbed to sediment particles and by the upwelling and horizontal transport of non-aqueous phase liquid, which contains PAHs. In surface sediments (0 to 6 inch depth interval), PAHs, PCBs and seven metals (barium, cadmium, copper, lead, mercury, nickel and silver) were found to be contributing to unacceptable ecological and human health risks. EPA issued a draft feasibility study ("FS") in December 2011 examining the potential methods of addressing the risk to human health and the environment.

14. EPA issued the Record of Decision ("ROD") on September 27, 2013. The selected remedy includes dredging of contaminated accumulated sediments in the canal and capping of contaminated native sediments. Temporary shoring of bulkheads will be necessary at the majority of parcels along the canal to prevent bulkhead collapse during dredging and capping operations. The

temporary shoring would involve driving sheet piling to depths greater than currently exist for nearly all of the bulkheads along the canal.

15. In 2004, the U.S. Army Corps of Engineers ("USACE") issued a cultural resources report developed as part of its ecosystem restoration study pursuant to the Clean Water Act, which determined that the canal's original bulkhead system was eligible for listing on the National Register of Historic Places. Regarding historic preservation of the bulkheads, the ROD indicates:

Should the bulkheads be subject to adverse effects as a result of cleanup actions, a wide range of mitigating measures could be implemented as part of the remedy. As noted above, the appropriate measures would likely include additional documentation of bulkhead characteristics and the incorporation of archaeological and architectural investigations.

16. Due to the original timber crib bulkhead construction, repair and upgrade options are limited. Typical repairs and upgrades involve installation of new sheet piling along the existing bulkhead face, resulting in incremental encroachment on the canal. NYSDEC seeks to limit and mitigate such encroachment when approving such repairs and upgrades along the canal. EPA's ROD requires creation of a wetlands mitigation area for off-setting such encroachment when it cannot be accomplished at any given parcel. Such a wetlands mitigation area will be achieved by means of the excavation and restoration of the contaminated, filled-in former 1st Street turning basin.

17. Respondent acquired the Property from Meadow Street Partners LLC, which had acquired the Property in 2004. Prior to Respondent 450 Union LLC's acquisition, the Property had previously been utilized as a coal and wood yard (1886-1928); granite works (1915); a die casting and electroplating facility (1922); a garage (1918-1930); a fuel company, garage and office(1931); and a foundry (1930-2007), with petroleum storage occurring from 1938 through at least 2001. The Property is currently used as a private event space, art gallery, and seasonal outdoor restaurant.

18. The Property is currently part of the NYSDEC Brownfields Cleanup Program ("BCP"). The actions required under the BCP are expected to fully address the uplands cleanup of the Property. The bulkhead at the Property is presently in satisfactory condition but not adequate to facilitate dredging. Pursuant to the BCP, Respondents are required to install a sealed bulkhead to limit the potential for future migration of any residual contamination to or from the Property. Such BCP bulkhead work does not address all of the bulkhead requirements for EPA's dredging remedy.

19. EPA is scheduled to begin dredging work on the section of the Canal in which the Property is located in approximately mid-2020. This Settlement Agreement coordinates the BCP requirements for the bulkhead at the Property with EPA's dredging requirements, provides for application of the permit exemption in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and for use of the mitigation area for the Site.

20. Respondents' bulkhead Work will result in an estimated area of encroachment on the canal of 100 square feet. Mitigation of encroachment from the Work will occur at the 1st Street turning basin.

21. The Work is a response action which will be conducted entirely on-Site and is, therefore, subject to the permit exemption in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the provisions of National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 C.F.R. Part 300. EPA intends to coordinate with the appropriate regulatory authorities, which include the USACE, the NYSDEC, New York City Department of Small Business Services and the New York State Historic Preservation Office ("SHPO") in order to ensure substantive compliance with the applicable regulatory requirements for the bulkhead and drainage Work.

22. The PAHs, PCBs and metals in the sediments at the Site are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). Unless appropriately remediated, exposure to the hazardous substances present at the Site can potentially cause adverse effects to human health and the environment.

23. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

24. Respondent 450 Union LLC is a limited liability company incorporated in the State of New York. 450 Union Developer LLC is a limited liability company incorporated in the State of New York. Each Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

25. The presence of hazardous substances in sediments at the Site constitutes a "release" or threat of "release" of hazardous substances into the environment, as the term "release" is defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. Respondents have been given the opportunity to discuss with EPA the basis for issuance of this Settlement Agreement and its terms.

V. DETERMINATIONS

27. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the NCP. These factors include, but are not limited to, the following conditions:

- a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants; and
- b. the unavailability of other appropriate federal or state response mechanisms to respond to the release.

28. EPA has determined that a removal action is necessary to address the release or threat of release of hazardous substances, pollutants or contaminants at the Site.

29. The actions required by this Settlement Agreement are necessary to protect the public health, welfare or the environment, are in the public interest, and, if carried out in compliance with the terms of this Settlement Agreement, will be considered to be consistent with the NCP.

30. Based upon the Findings of Fact and Conclusions of Law set forth above, and the administrative record supporting this

removal action, EPA has determined that the actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health or welfare or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), and it is hereby agreed and ordered that Respondents shall undertake a removal action at the Site, as set forth in Section VI (Work To Be Performed), below.

VI. WORK TO BE PERFORMED

A. Designation of Contractor and Designated Project Coordinator

31. Respondents' approved Project Coordinator is:

Kenneth Huber, PE
Senior Project Manager
Langan Engineering
21 Penn Plaza
360 West 31st Street, 8th Floor
New York, NY 10001-2727
Direct: 212.479.5415
Mobile: 631.525.6007
khuber@Langan.com

The Project Coordinator shall be responsible, on behalf of Respondents, for oversight of the implementation of this Settlement Agreement. The Project Coordinator shall be knowledgeable at all times about all matters relating to the Work being performed under this Settlement Agreement.

32. In the event that Respondents change their Project Coordinator, Respondents shall submit the name, address, qualifications, and telephone number of the new Project Coordinator to the EPA Project Coordinator specified in Paragraph 46, below. The new Project Coordinator shall not be an attorney engaged in the practice of law. He or she shall have the technical expertise sufficient to adequately oversee all aspects of the Work contemplated by this Settlement Agreement. Selection of a new Project Coordinator shall be subject to approval by EPA in writing. If EPA disapproves a proposed Project Coordinator, Respondents shall propose a different person and notify EPA of that person's name, address, telephone number and qualifications within seven (7) days

following EPA's disapproval. Respondents may change its Project Coordinator provided that EPA has received written notice at least seven (7) days prior to the desired change. All changes of the Project Coordinator shall be subject to EPA approval.

33. Respondents shall ensure that all Work requiring certification by a professional engineer licensed in the State of New York shall be reviewed and certified by such.

34. EPA correspondence related to this Settlement Agreement will be sent to the Project Coordinator on behalf of Respondents. To the extent possible, the Project Coordinator shall be present on-Site or readily available for EPA to contact during all working days and be retained by Respondents at all times until EPA issues a notice of completion of the Work in accordance with Paragraph 108. Notice by EPA in writing to the Project Coordinator shall be deemed notice to Respondents for all matters relating to the Work under this Settlement Agreement and shall be deemed effective upon receipt.

35. All activities required of Respondents under the terms of this Settlement Agreement shall be performed only by well-qualified persons possessing all necessary permits, licenses, and other authorizations required by federal, state, and/or local governments consistent with Section 121 of CERCLA, 42 U.S.C. § 9621, and all Work conducted pursuant to this Settlement Agreement shall be performed in accordance with prevailing professional standards.

36. Respondents shall retain at least one contractor to perform the Work. Respondents shall notify EPA of the name and qualifications of the proposed contractor within ten (10) days of the effective date of this Settlement Agreement. If said contractor is a prime or supervising contractor, Respondents shall notify EPA of the name and qualifications of other contractor(s) or subcontractor(s) proposed to perform Work under this Settlement Agreement at least ten (10) days prior to commencement of such Work.

37. EPA retains the right to disapprove of any, or all, of the contractor(s) and/or subcontractor(s) proposed by Respondents to conduct the Work. If EPA disapproves in writing of any of Respondents' proposed contractor(s) and/or subcontractor(s) to conduct the Work, Respondents shall propose a different

contractor(s) and/or subcontractor(s) within seven (7) days of receipt of EPA's disapproval.

38. Respondents shall provide a copy of this Settlement Agreement to each contractor and subcontractor retained to perform the Work required by this Settlement Agreement. Respondents shall include in all contracts or subcontracts entered into for Work required under this Settlement Agreement provisions stating that such contractors or subcontractors, including its agents and employees, shall perform activities required by such contracts or subcontracts in compliance with this Settlement Agreement and all applicable laws and regulations. Respondents shall be responsible for ensuring that its contractors and subcontractors perform the Work contemplated herein in accordance with this Settlement Agreement.

B. Description of Work

39. Respondents shall perform, at a minimum, all actions necessary to implement the Work set forth in this paragraph. Respondents shall take all steps necessary to complete implementation of the Work by July 31, 2020, or such other schedule as Respondents may propose, and EPA may approve, which will not delay dredging adjacent to the Property. The actions to be implemented include, but may not be limited to, the following:

a. The installation of a bulkhead in conformity with the approved Bulkhead Work Plan ("BWP") attached hereto as Exhibit "A".

b. Such other investigations, studies, and response actions as EPA or Respondents may propose and upon which both agree to include under this Settlement Agreement.

40. If the performance of any subsequent phase of the Work required by this Settlement Agreement requires alteration of the Health and Safety Plan contained in the BWP, Respondents shall submit to EPA for review and any comment proposed amendments to the Health and Safety Plan.

41. The BWP shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement. Respondents shall fully implement the EPA-approved BWP in accordance with

the terms and schedule therein and in accordance with this Settlement Agreement.

42. Should any of the work contemplated under the BWP foreseeably cause soil movement or disturbance at the Property, then such work shall be done in accordance with the NYSDEC-approved BCP Site Management Plan, if such is in place at the time of the work. If there is no BCP Site Management Plan in place at the time of the planned bulkhead work, then such work shall be subject to NYSDEC review, comment, and approval prior to implementation of the Work.

43. Upon request by EPA, Respondents shall allow EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondents while performing Work under this Settlement Agreement. Respondents shall notify EPA not less than seven (7) days in advance of any sample collection activity.

44. At the time of completion of all field activities required by this Settlement Agreement, demobilization shall include sampling if deemed necessary by EPA, and proper disposal or decontamination of: protective clothing; remaining laboratory samples taken pursuant to this Settlement Agreement; and any equipment or structures constructed to facilitate the removal action.

45. Respondents shall conduct the Work required hereunder in accordance with CERCLA and the NCP, and in addition to guidance documents referenced above, the following guidance documents: *EPA Region 2's "Clean and Green Policy"* which may be found at <http://epa.gov/region2/superfund/greenremediation/policy.html>, and Guide to Management of Investigation-Derived Wastes (OSWER Publication 9345.3-03FS, January 1992), as they may be amended or modified by EPA.

C. EPA Project Coordinator, Other Personnel, and Modifications to EPA-Approved Plans

46. The current EPA Project Coordinator for the Work is:

Christos Tsiamis
Remedial Project Manager
New York Remediation Branch

Superfund and Emergency Management Division
U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, NY 10007-1866
(212) 637-4257
tsiamis.christos@epa.gov

EPA will notify Respondents' Project Coordinator if EPA designates a different Project Coordinator for the Work.

47. The EPA Project Coordinator or his authorized representative will conduct oversight of the implementation of the Work. The EPA Project Coordinator shall have the authority vested in an On-Scene Coordinator by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other response action undertaken by EPA or Respondents at the Property consistent with this Settlement Agreement. Absence of the EPA Project Coordinator from the Property shall not be cause for stoppage of Work unless specifically directed by the EPA Project Coordinator.

48. As appropriate during the course of implementation of the actions required of Respondents pursuant to this Settlement Agreement, Respondents or their consultants or contractors, acting through the Project Coordinator, may confer with EPA concerning the required actions. Based upon new circumstances or new information not in the possession of EPA on the Effective Date, the Project Coordinator may request, in writing, EPA approval of modification(s) to the EPA-approved plans. Only modifications approved by EPA in writing shall be deemed effective. Upon approval by EPA, such modifications shall be deemed incorporated into this Settlement Agreement and shall be implemented by Respondents.

VII. PLANS AND REPORTS REQUIRING EPA APPROVAL

49. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement, Respondents shall have fourteen (14) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer

period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondents shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondents a written statement to that effect.

50. If any plan, report, or other item required to be submitted to EPA for approval pursuant to this Settlement Agreement is disapproved by EPA, even after being resubmitted following Respondents' receipt of EPA's comments on the initial submittal, Respondents shall be deemed to be out of compliance with this Settlement Agreement. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondents to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs of doing so from Respondents. Respondents shall implement any such item(s) as amended or developed by EPA.

51. EPA shall be the final arbiter in any dispute regarding the sufficiency or acceptability of all documents submitted and all Work performed pursuant to this Settlement Agreement.

52. All plans, reports and other submittals required to be submitted to EPA pursuant to this Settlement Agreement, upon approval by EPA, shall be deemed to be incorporated into and an enforceable part of this Settlement Agreement.

VIII. REPORTING AND NOTICE TO EPA

53. Respondents shall provide, via email to EPA's Project Coordinator, at least one (1) week advance notice of all field activities, and weekly progress reports, or such other frequency as approved by EPA's Project Coordinator, while Respondents are conducting field activities.

54. Respondents shall provide EPA with at least one (1) week advance notice of any change in the schedule.

55. The Final Report referred to in Paragraph 57, below, and other documents submitted by Respondents to EPA which purport to document Respondents' compliance with the terms of this

Settlement Agreement shall be signed by a responsible official of Respondents or by the Project Coordinator designated pursuant to Paragraph 31. For purposes of this paragraph, a responsible official is an official who is in charge of a principal business function.

56. The Final Report and other documents required to be submitted to EPA under this Settlement Agreement shall be sent to the following addressees:

2 copies: Remedial Project Manager - Gowanus Canal Site
(1 bound, Superfund and Emergency Management Division
1 electronic) U.S. Environmental Protection Agency, Region 2
290 Broadway, 19th Floor
New York, New York 10007-1866
tsiamis.christos@epa.gov

1 copy: Chief, New York/Caribbean Superfund Branch
(via email Office of Regional Counsel
or electronic) U.S. Environmental Protection Agency, Region 2
290 Broadway, 17th Floor
New York, New York 10007-1866
Attn: Gowanus Canal Superfund Site Attorney
carr.brian@epa.gov

1 copy each: N.Y.S. Department of Environmental Conservation
(via email) gerard.burke@dec.ny.gov
patrick.foster@dec.ny.gov
aaron.Fischer@dec.ny.gov
heidi.dudek@dec.ny.gov
jane.oconnell@dec.ny.gov
nigel.crawford@dec.ny.gov

57. Within thirty (30) days after completion of the Work, Respondents shall submit for EPA review and approval a Final Report summarizing the actions taken to comply with this Settlement Agreement. The Final Report shall include, as applicable:

- a. A synopsis of all Work performed under this Settlement Agreement;
- b. A detailed description of all EPA-approved modifications that occurred during Respondents'

performance of the Work required under this Settlement Agreement;

- c. A listing of quantities and types of materials removed from the Property or handled at the Property;
- d. A discussion of removal and disposal options considered for those materials;
- e. A listing of the ultimate destination of those materials;
- f. A presentation of the analytical results of all sampling and analyses performed, including data and chain of custody records;
- g. Accompanying appendices containing "as-built" drawings and all relevant documentation generated during the Work (e.g., manifests, bills of lading, invoices, bills, contracts, certificates of destruction and permits;
- h. An accounting of expenses incurred by Respondents in performing the Work; and
- i. The following certification signed by a person who supervised or directed the preparation of the Final Report:

"I certify that the information contained in and accompanying this document is true, accurate, and complete."

58. EPA either will approve the Final Report or will require modifications thereto pursuant to Paragraphs 49-52, above.

IX. OVERSIGHT

59. During the implementation of the requirements of this Settlement Agreement, Respondents and their contractor(s) and subcontractors shall be available for such conferences with EPA and inspections by EPA or its authorized representatives as EPA may determine are necessary to adequately oversee the Work being

carried out or to be carried out by Respondents, including inspections at the Property.

60. Respondents and their employees, agents, contractor(s) and consultant(s) shall cooperate with EPA in its efforts to oversee Respondents' implementation of this Settlement Agreement.

X. COMMUNITY RELATIONS

61. Respondents shall cooperate with EPA in providing information relating to the Work required hereunder to the public. As requested by EPA, Respondents shall participate in the preparation of all appropriate information disseminated to the public; participate in public meetings that may be held or sponsored by EPA to explain activities at or concerning the Property; and provide a suitable location for public meetings, as needed.

XI. ACCESS TO PROPERTY AND INFORMATION

62. EPA, NYSDEC, and their designated representatives, including, but not limited to, employees, agents, contractor(s), and consultant(s) thereof, shall be permitted to observe the Work carried out pursuant to this Settlement Agreement. Respondents shall at all times permit EPA, NYSDEC, and their designated representatives full access to and freedom of movement at the portion of the Property where Work is performed and any other premises where Work under this Settlement Agreement is to be performed for purposes of inspecting or observing Respondents' progress in implementing the requirements of this Settlement Agreement, verifying the information submitted to EPA by Respondents, conducting investigations relating to contamination at the Site, or for any other purpose EPA determines to be related to EPA oversight of the implementation of this Settlement Agreement.

63. In the event that action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondents, Respondents shall use best efforts to obtain access agreements from the present owners within twenty (20) days of the Effective Date for purposes of implementing the requirements of this Settlement Agreement. Such agreements shall provide access not only for Respondents, but also for EPA and its designated representatives or agents, as well as NYSDEC

and its designated representatives or agents. Such agreements shall specify that Respondents are not EPA's representative with respect to liability associated with Site activities. If such access agreements are not obtained by Respondents within the time period specified herein, Respondents shall immediately notify EPA of its failure to obtain access and shall include in that notification a summary of the steps Respondents have taken to attempt to obtain access. Subject to the United States' non-reviewable discretion, EPA may use its legal authorities to obtain access for Respondents, may perform those response actions with EPA contractors at the property in question, or may terminate the Settlement Agreement if Respondents cannot obtain access agreements. If EPA performs those tasks or activities with EPA contractors and does not terminate the Settlement Agreement, Respondents shall perform all other activities not requiring access to that property. Respondents shall integrate the results of any such tasks undertaken by EPA into its reports and deliverables.

64. Upon request, Respondents shall provide EPA with access to all records and documentation related to the conditions at the Site, hazardous substances found at or released from the Site, and the actions conducted pursuant to this Settlement Agreement except for those items, if any, subject to the attorney-client or attorney work product privileges. Nothing herein shall preclude Respondents from asserting a business confidentiality claim pursuant to 40 C.F.R. Part 2, Subpart B. All data, information, and records created, maintained, or received by Respondents or their contractor(s) or consultant(s) in connection with implementation of the Work under this Settlement Agreement, including, but not limited to, contractual documents, invoices, receipts, work orders, and disposal records shall, without delay, be made available to EPA upon request, subject to the same privileges specified above in this paragraph. EPA shall be permitted to copy all such documents. Respondents shall submit to EPA upon receipt the results of all sampling or tests and all other technical data generated by Respondents or their contractor(s), or on Respondents' behalf, in connection with the implementation of this Settlement Agreement.

65. Notwithstanding any other provision of this Settlement Agreement, EPA hereby retains all of its information gathering, access, and inspection authority under CERCLA, RCRA, and any other applicable statutes or regulations.

XII. RECORD RETENTION, DOCUMENTATION, AVAILABILITY
OF INFORMATION

66. Respondents shall preserve all documents and information relating to Work performed under this Settlement Agreement, or relating to Waste materials found on or released from the Site, for six (6) years after completion of the Work required by this Settlement Agreement. At the end of the six (6) year period, Respondents shall notify EPA at least thirty (30) days before any such document or information is destroyed that such documents and information are available for inspection. Upon request, Respondents shall provide EPA with the originals or copies of such documents and information.

67. All documents submitted by Respondents to EPA in the course of implementing this Settlement Agreement shall be available to the public unless identified as confidential by Respondents pursuant to 40 C.F.R. Part 2, Subpart B, and determined by EPA to merit treatment as confidential business information in accordance with applicable law. In addition, EPA may release all such documents to NYSDEC, and NYSDEC may make those documents available to the public unless Respondents conforms with applicable New York law and regulations regarding confidentiality. Respondents shall not assert a claim of confidentiality regarding any monitoring or hydrogeologic data, any information specified under Section 104(e)(7)(F) of CERCLA, or any other chemical, scientific, or engineering data relating to the Work performed hereunder.

XIII. OFF-SITE SHIPMENTS

68. All hazardous substances and pollutants or contaminants removed from the Property pursuant to this Settlement Agreement for off-Site treatment, storage, or disposal shall be treated, stored, or disposed of in compliance with (a) Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), (b) Section 300.440 of the NCP, (c) the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, (d) RCRA, (e) the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*, and (f) all other applicable federal and state requirements.

69. If hazardous substances from the Site are to be shipped outside of New York State, Respondents shall provide prior notification of such Waste shipments in accordance with the EPA

Memorandum entitled "Notification of Out-of-State Shipments of Superfund Site Wastes" (OSWER Directive 9330.2-07, September 14, 1989). At least five (5) Working Days prior to such Waste shipments, Respondents shall notify the environmental agency of the accepting state of the following: (a) the name and location of the facility to which the Wastes are to be shipped; (b) the type and quantity of Waste to be shipped; (c) the expected schedule for the Waste shipments; (d) the method of transportation and name of transporter; and (e) the treatment and/or disposal method of the Waste streams.

XIV. COMPLIANCE WITH OTHER LAWS

70. All actions required pursuant to this Settlement Agreement shall be performed in accordance with all applicable Federal and State laws and regulations except as provided in CERCLA § 121(e)(1), 42 U.S.C. § 9621(e)(1), and 40 C.F.R. § 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under Federal environmental or State environmental or facility siting laws. (See "Superfund Removal Procedures: Guidance on the Consideration of ARARs During Removal Actions," OSWER Directive No. 9360.3-02, August 1991).

71. As provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-Site. Where any portion of the Work requires a federal or state permit or approval, Respondents shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XV. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

72. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste on, at, or from the Property that either constitutes an emergency situation or that may present an immediate threat to

public health or welfare or the environment, Respondents shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondents shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan. Respondents shall also immediately notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at 732-906-6850 of the incident or conditions. In the event that Respondents fail to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondents shall reimburse EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XVI (Reimbursement of Costs).

73. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondents are required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondents shall immediately orally notify the EPA Project Coordinator or, in the event of his/her unavailability, the Regional Duty Officer at 732-906-6850, and the National Response Center at (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

74. For any event covered under this Section, Respondents shall submit a written report to EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

75. Nothing in the preceding paragraph shall be deemed to limit any authority of the United States to take, direct, or order all appropriate action to protect human health and the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances on, at, or from the Site.

XVI. REIMBURSEMENT OF COSTS

76. Respondents hereby agree to reimburse EPA for all Response Costs. EPA will periodically send billings to Respondents for Response Costs. The billings will be accompanied by a printout of cost data in EPA's financial management system. Respondents shall remit payment to EPA via electronic funds transfer ("EFT") within thirty (30) days of receipt of each such billing.

77. To effect payment via EFT, Respondents shall instruct its bank to remit payment in the required amount via EFT using the following information, or such other updated EFT information that EPA may subsequently provide to Respondents:

- . Amount of payment
- . Bank: **Federal Reserve Bank of New York**
- . Account code for Federal Reserve Bank account receiving the payment: **68010727**
- . Federal Reserve Bank ABA Routing Number: **021030004**
- . SWIFT Address: **FRNYUS33**
33 Liberty Street
New York, NY 10045
- . Field Tag 4200 of the Fedwire message should read:
D 68010727 Environmental Protection Agency
- . Name of remitter:
- . Settlement Agreement Index number: **CERCLA-02-2020-2004**
- . Site/spill identifier: **02-ZP**

At the time of payment, Respondents shall send notice via regular mail that such payment has been made to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and via email to the following:

cinwd_acctsreceivable@epa.gov; chalifoux.jessica@epa.gov
tsiamis.christos@epa.gov and carr.brian@epa.gov.

Such notices shall reference the date of the EFT, the payment amount, the name of the Site, the Settlement Agreement index number, and Respondents' name and address.

The total amount to be paid by Respondents pursuant to this paragraph shall be deposited into the Gowanus Canal Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

78. Respondents shall pay interest on any amounts overdue under Paragraph 76 above. Such interest shall begin to accrue on the first day that payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

XVII. FORCE MAJEURE

79. "Force majeure," for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Respondents and of any entity controlling, controlled by, or under common control with Respondents, including their contractors and subcontractors, that delays the timely performance of any obligation under this Settlement Agreement notwithstanding Respondents' best efforts to avoid the delay. The requirement that Respondents exercise "best efforts to avoid the delay" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event: (a) as it is occurring; and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent practicable. Examples of events that are not force majeure events include, but are not limited to, increased costs or expenses of any Work to be performed under this Settlement Agreement or the financial difficulty of Respondents to perform such Work.

80. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a force majeure event, Respondents shall notify by telephone the EPA Project Coordinator or, in his absence, the Chief of the Central New York Remediation Section of the Superfund and Emergency Management Division of EPA Region II at 212-637-4288 within forty-eight (48) hours of when Respondents knew or should have known that the event might cause a delay. In addition, Respondents shall notify EPA in writing

within seven (7) calendar days after the date when Respondents first become aware or should have become aware of the circumstances that may delay or prevent performance. Such written notice shall be accompanied by all available and pertinent documentation, including third-party correspondence, and shall contain the following: (a) a description of the circumstances, and Respondents' rationale for interpreting such circumstances as being beyond its control (should that be Respondents' claim); (b) the actions (including pertinent dates) that Respondents have taken and/or plans to take to minimize any delay; and (c) the date by which or the time period within which Respondents propose to complete the delayed activities. Such notification shall not relieve Respondent of any of its obligations under this Settlement Agreement. Respondents' failure to timely and properly notify EPA as required by this paragraph shall constitute a waiver of Respondents' right to claim an event of force majeure. The burden of proving that an event constituting a force majeure has occurred shall rest with Respondents.

81. If EPA determines that a delay in performance of a requirement under this Settlement Agreement is or was attributable to a force majeure, the time period for performance of that requirement shall be extended as deemed necessary by EPA. Such an extension shall not alter Respondents' obligation to perform or complete other tasks required by the Settlement Agreement that are not directly affected by the force majeure. Respondents shall use its best efforts to avoid or minimize any delay or prevention of performance of its obligations under this Settlement Agreement.

XVIII. STIPULATED AND STATUTORY PENALTIES

82. If Respondents fail to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Paragraphs 79 through 81 above (Force Majeure), Respondents shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below:

- a. For all requirements of this Settlement Agreement, other than the timely provision of progress reports required by Paragraph 53, stipulated penalties shall accrue in the amount of \$750 per day, per violation, for the first

seven days of noncompliance, \$1,000 per day, per violation, for the 8th through 15th day of noncompliance, \$1,500 per day, per violation, for the 16th through 25th day of noncompliance, and \$3,000 per day, per violation, for the 26th day of noncompliance and beyond.

- b. For all requirements of this Settlement Agreement related to the progress reports required by Paragraph 53, stipulated penalties shall accrue in the amount of \$250 per day, per violation, for the first seven days of noncompliance, \$500 per day, per violation, for the 8th through 15th day of noncompliance, \$1,000 per day, per violation, for the 16th through 25th day of noncompliance, and \$2,000 per day, per violation, for the 26th day of noncompliance and beyond.

83. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondents that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made via EFT in accordance with the payment procedures in Paragraph 77 above, and note that payment is for a penalty. Respondents shall pay interest on any amounts overdue under this paragraph. Such interest shall begin to accrue on the first day that the payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

84. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondents of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondents' obligation to complete the performance of the Work required under this Settlement Agreement.

85. Notwithstanding any other provision of this Settlement Agreement, failure of Respondents to comply with any provision of this Settlement Agreement may subject Respondents to civil penalties of up to fifty-eight thousand three hundred twenty-

eight dollars (\$58,328) per violation per day, as provided in Sections 109 and 122(1) of CERCLA, 42 U.S.C. §§ 9609 and 9622(1), and the Debt Collection and Improvement Act of 1996 (see Civil Monetary Penalty Inflation Adjustment Rule, 85 Fed. Reg. 1751 (January 13, 2020)), and 40 C.F.R. Part 19.4, unless such failure to comply is excused by EPA under the terms of Paragraphs 79 through 81 above. Respondents may also be subject to punitive damages in an amount at least equal to but not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondents violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 and 122 of CERCLA, 42 U.S.C. §§ 9606 and 9622.

XIX. OTHER CLAIMS

86. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondents or Respondents' employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondents' or their directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

87. Except as expressly provided in Paragraph 100 (Waiver of Claims) and Section XXIII (Covenant Not to Sue by EPA), below, nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondents or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

88. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XX. INDEMNIFICATION

89. Respondents agree to indemnify, save, and hold harmless the United States, its agencies, departments, officials, agents, contractors, subcontractors, employees, and representatives from any and all claims or causes of action arising from or on account of acts or omissions of Respondents, their employees, officers, directors, agents, servants, receivers, trustees, successors, assigns, or any other persons acting on behalf of Respondents or under their control, as a result of the fulfillment or attempted fulfillment of the terms and conditions of this Settlement Agreement by Respondents.

90. Respondents waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondents shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondents and any person for performance of Work on or relating to the Site, including but not limited to, claims on account of construction delays.

91. Further, Respondents agree to pay the United States all costs it incurs including, but not limited to, attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on acts or omissions of Respondent, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement.

XXI. INSURANCE

92. At least seven (7) days prior to commencing any Work at the Property, Respondents shall submit to EPA a certification that Respondents or their contractors and subcontractors have adequate insurance coverage or have indemnification for liabilities for injuries or damages to persons or property which may result from the activities to be conducted by or on behalf of Respondents pursuant to this Settlement Agreement. Respondents shall ensure that such insurance or indemnification is maintained for the duration of the Work required by this Settlement Agreement.

XXII. FINANCIAL ASSURANCE

93. Respondents shall demonstrate its ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining and presenting to EPA within twenty (20) days of the Effective Date one of the following: (1) a performance bond; (2) a letter of credit; (3) a guarantee by a third party; or (4) a demonstration by Respondents that they meet the relevant financial test criteria of 40 C.F.R. § 264.143(f) and reporting requirements of this Section for the sum of the Estimated Cost of the Work set forth below. Respondents shall demonstrate financial assurance in an amount no less than \$1,500,000, which is the estimated cost of the Work to be performed by Respondents under this Settlement Agreement.

XXIII. COVENANT NOT TO SUE BY EPA

94. In consideration of the actions that will be performed and the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondents pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for performance of the Work and for recovery of Response Costs. This covenant not to sue shall take effect upon the Effective Date and is conditioned upon the complete and satisfactory performance by Respondents of all obligations under this Settlement Agreement, including, but not limited to, payment of Response Costs pursuant to Section XVI (Reimbursement

of Costs), above. This covenant not to sue extends only to Respondents and does not extend to any other person.

XXIV. RESERVATION OF RIGHTS BY EPA

95. Except as specifically provided in this Settlement Agreement, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Property or the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondents in the future to perform additional activities pursuant to CERCLA or any other applicable law.

96. The covenant not to sue set forth in Section XXIII (Covenant Not to Sue by EPA), above, does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all other matters, including, but not limited to:

a. Claims based on a failure by Respondents to meet a requirement of this Settlement Agreement;

b. Liability for costs not included within the definition of Response Costs;

c. Liability for performance of response actions other than the Work;

d. Criminal liability;

e. Liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

f. Liability arising from the past, present, or future disposal, release or threat of release of Waste outside of the Property; and

g. Liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

97. Work Takeover. In the event EPA determines that Respondents have ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Costs incurred by EPA in performing the Work pursuant to this paragraph shall be considered Response Costs that Respondents shall pay pursuant to Section XVI (Reimbursement of Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXV. COVENANT NOT TO SUE BY RESPONDENTS

98. Respondents covenant not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Response Costs, or this Settlement Agreement, including, but not limited to:

a. Any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. Any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the New York State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. Any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 100 (Waiver of Claims), this covenant not to sue shall not apply in the event the United

States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 96 (b), (c), and/or (e)-(g), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

99. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

100. Waiver of Claims. Respondents agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondents with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

101. The waiver in Paragraph 100 shall not apply with respect to any defense, claim, or cause of action that Respondents may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against Respondents. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. That such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted or a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. That the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXVI. EFFECT OF SETTLEMENT/CONTRIBUTION

102. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondents have, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 122(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement are the Work and Response Costs.

103. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Respondents have, as of the Effective Date, resolved liability to the United States for the Work performed under this Settlement Agreement and for Response Costs within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

104. Except as provided in Paragraph 100 (Waiver of Claims), nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XXV (Covenant Not to Sue by Respondents), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXVII. MODIFICATIONS

105. The EPA Project Coordinator may make modifications to any plan or schedule in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the EPA Project Coordinator's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the Parties.

106. If Respondents seek permission to deviate from any approved work plan or schedule, Respondents' Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondents may not proceed with the requested deviation until receiving oral or written approval from the EPA Project Coordinator pursuant to Paragraph 105.

107. No informal advice, guidance, suggestion, or comment by the EPA Project Coordinator or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondents shall relieve Respondents of their obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVIII. TERMINATION AND SATISFACTION

108. Upon a determination by EPA (following its receipt of the Final Report referred to in Paragraph 57, above) that the Work required pursuant to this Settlement Agreement has been fully carried out in accordance with this Settlement Agreement, EPA will so notify Respondents in writing. Such notification shall not affect any continuing obligations of Respondents. If EPA determines that any removal activities have not been completed in accordance with this Settlement Agreement, EPA may so notify Respondents, provide a list of the deficiencies, and require that Respondents correct such deficiencies.

XXIX. INTEGRATION

109. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in

this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A - Bulkhead Work Plan (Electronic)

XXX. EFFECTIVE DATE

110. This Settlement Agreement shall become effective on the date that EPA transmits a fully executed copy of this Settlement Agreement via electronic mail to Respondents. All times for performance of actions or activities required herein will be calculated from said Effective Date.

U.S. ENVIRONMENTAL PROTECTION AGENCY



Eric Wilson
Acting Director
Superfund and Emergency Management Division
U.S. Environmental Protection Agency
Region II


Date

In the Matter of the Gowanus Canal Site, EPA Index No. CERCLA-02-2020-2004

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

450 Union LLC
(Name of Respondent)



(Signature)

2/6/2020

(Date)

Robert Rieger

(Printed Name of Signatory)

Manager

(Title of Signatory)

In the Matter of the Gowanus Canal Site, EPA Index No. CERCLA-02-2020-2004

CONSENT

The Respondent named below has had an opportunity to confer with EPA to discuss the terms and the issuance of this Settlement Agreement. The Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. Furthermore, the individual signing this Settlement Agreement on behalf of Respondent certifies that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent.

450 Union Developer LLC
(Name of Respondent)


(Signature)

2/6/2020
(Date)

Robert Rieger
(Printed Name of Signatory)

Manager
(Title of Signatory)